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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
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Item 3 of the provisional agenda*
Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 4 *ter*, 5, 6, 9, 10 and 14

Proposals and contributions received from Governments

Addendum

Page

II. Proposals and contributions received from Governments 2
Poland 2

*A/AC.254/15.

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Poland

Article 9

Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3 ([Criminalization of] participation in an [organized criminal group]), 4 (Money-laundering) and 4 *ter* (Measures against corruption) of this Convention when:

(a) The offence is committed in the territory of that State;

(b) The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national [or a habitual resident] of that State;

(b) The offence is committed by a habitual resident of that State;

(c) The offence is committed on board a vessel or an aircraft that is operated by the Government of that State; or

(d) The offence involves public officials of that State or affects the [proper] functioning of its public administration [and/or financial institutions].

3. If the State exercising its jurisdiction under paragraphs 1 or 2 of this article has been notified, or otherwise learned, that one or more other States are conducting an investigation or carrying out criminal proceedings in respect of the same conduct, its competent authorities shall consult all interested parties with a view to resolving the matter and coordinating their actions. Until a solution has been reached, each of the States involved will take all necessary measures to examine, collect or test evidence that may not be available subsequently for the purposes of a trial.

4. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article, as well as any changes thereto.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

6. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other international treaty.

Article 10: Extradition

Proposed amendments

1. Insert the following three new paragraphs:

"15. If necessary, the offences established in articles 3 ([Criminalization of] participation in an [organized criminal group]), 4 (Money-laundering) and 4 *ter* (Measures against corruption) of this Convention shall be treated, for the purposes of extradition between State Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with paragraphs 1 and 2 of article 9 (Jurisdiction).

"16. For the purposes of extradition under this article, the offences established in articles 3 ([Criminalization of] participation in an [organized criminal group]), 4 (Money-laundering), and 4 *ter* (Measures against corruption) of this Convention shall not be considered fiscal offences or political offences or regarded as politically motivated, without prejudice to the constitutional principles and basic concepts of the domestic legal systems of States Parties.

"17. The extradition shall be refused if the facts on which the request is grounded do not constitute an offence under the law of the requested State. To establish double criminality, the competent authorities of that State shall satisfy themselves that the essential [substantial] elements of the conduct described in the request and/or the warrant of arrest correspond to an offence punishable under the laws of their State. The establishment of double criminality with respect to money-laundering is not conditional upon the predicate offence."

Note. Delegates may wish to specify the requirements of double criminality with respect to two other offences established in the Convention, that is, participation in an organized criminal group and corruption [of public officials].

2. Delete the first sentence of paragraph 7.

3. The second (bracketed) sentence of paragraph 7 should read as follows:

"States Parties shall consider surrendering to each other, subject to their domestic law, under speedy and simplified procedures any persons sought for the purpose of extradition, subject to the agreement of the requested State and the consent of such persons, provided that the consent has been expressed voluntarily and in full awareness of the consequences. The requested State shall afford such persons the right to legal counsel."